UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,743	09/05/2003	Martha Kelsey	29621/38774A	9078

4743 7590 09/30/2005

MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

EXAMINER	
DOAN, ROBYN KIEU	
ART UNIT	**PAPER NUMBER**
3732	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TTAS

Office Action Summary	Application No.	Applicant(s)	
	10/656,743	KELSEY, MARTHA	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *11 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-8,10-17 and 19-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) *22* is/are allowed.

6)☐ Claim(s) *1-8,10-17 and 19-21* is/are rejected.

7)☐ Claim(s) *22* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant's Amendment filed 07/11/2005 has been entered and carefully considered. Claims 9 and 18 have been canceled. Claims 7, 19-20 have been amended. Claim 22 is allowable over prior art of record. Arguments regarding 35 U.S.C. 112 2nd paragraph and 35 U.S.C 103 (a) have not been found to be persuasive, therefore, claims 1-8, 10-17, 19-21 are rejected under the same ground rejections as set forth in the office action mailed 03/08/05.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 7, 14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4, 7, 14 and 17 contain the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See Ex parte Simpson, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade

name does not identify or describe the goods associated with the trademark or trade name.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 5, 8 and 10-12, 15, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill '465 in view of Lowery (GB 2167946).

With regard to claims 1, 2, 5, 8 and 10-12, 15, 19-21, Hill discloses a device and method of straightening the hair (col. 4, lines 31-32) comprising the steps of opening a body (10, col. 4, lines 36-37) of a hair straightening device, the body having a first portion (fig. 7, 18) with an inner surface (14), a first side and a second side, a second portion (16) also with an inner surface (14), a first side and a second side, wherein the first and second portions being pivotally connected at a hinge (20, 22) disposing near the first sides, placing the strands of hair between the first and second portions (col. 4, lines 38-39), closing the body by with a fastener mechanism (38, 40) disposing near the second sides (30, 32); the first and second portions further having a generally rectangular shape and the hinge being located along the long side of the rectangular

portions, the first and second portions being two halves of a single piece (fig. 7). In regard to claim 21, Hill further discloses the step of wetting the strands of hair (col. 4, lines 34-36) ; the first and second portions as discussed above further having a generally rectangular shape and the hinge being located along the long side of the rectangular portions, the first and second portions being two halves of a single piece (fig. 7). Hill does not disclose a plurality of bristles disposing on the inner surfaces of both first and second portions of the body and the bristles being integral to one of the first and the second portions. Lowery discloses a device for straightening the hair (fig. 1) comprising a body having a first and second portions (4, 5), with inner surfaces, a plurality of bristles (6) being integral and disposing on the inner surfaces of the first and second portions. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the bristles as taught by Lowery into the device of Hill for the purpose of gripping and straightening the hair.

Claims 3-4, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill in view of Lowery as applied to claims 1 and 11 and further in view of Rajwani (IDS cited reference GB2371744).

With regard to claims 3-4 and 13-14, Hill in view of Lowery disclose a hair straightening device comprising all the claimed limitations in claims 1 and 11 as discussed above except for the bristles being constructed from a part of hook and loop fastener. Rajwani discloses a device for hair treatment (figs. 3-4) comprising a sheet sealed at one end and being provided with hooks (3a) and loop fastener part to fasten

the hair. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the bristles in the hooks and loop fastener forms as taught by Rajwani into the hair device of Hill in view of Lowery for the purpose of improving the retaining of hairs.

Claims 6-7 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill in view of Lowery as applied to claims 1 and 11 above, and further in view of Leoci (3871388).

With regard to claims 6-7 and 16-17, Hill in view of Lowery disclose a hair straightening device comprising all the claimed limitations in claims 1 and 11 as discussed above except for the faster mechanism being a hook and loop material. Leoci discloses a hair treatment device (fig. 1) comprising a first and second rectangular portions (14), a fastening mechanism including a hook and loop material (16, 170 being disposed on an inner surface of each of the first and second portions. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the hook and loop material as taught by Leoci into the hair device of Hill in view of Lowery for the purpose of sealing the first and the second portions so that the hair may be retained therein.

Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant has argued that using the bristles of Lowery's reference would be less effective in compressing (straightening) the hair. This is not true. Hill teaches one way of straightening the hair using a hair clamp with a foam liner whereas Lowery teaches another way of straightening the hair by compressing hair strands between bristles and also it is well known in the art to apply a hair treatment to the hair using a device with bristles, therefore one skill in the art would get as well effective as the instant invention in straightening the hair using the device of Hill in view of Lowery.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robyn Doan
September 28, 2005

John J. Wilson
Primary Examiner